

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

DEPARTMENT OF TRANSPORTATION,)	
)	
Plaintiff,)	
)	JUDGMENT IN A
v.)	CIVIL CASE
)	CASE NO. 5:21-CV-383-D
CITY OF RALEIGH, and UNITED STATES)	
OF AMERICA,)	
)	
Defendants.)	

Decision by Court. This action came before this Court for ruling as follows.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Department of Transportation, plaintiff herein, was entitled to acquire and did acquire on the 10th day of August, 2020, by the filing of a Complaint and Declaration of Taking and Notice of Deposit, together with the deposit of ONE MILLION ONE HUNDRED-SIXTY -TWO THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$1,162,850.00) with the Wake County Clerk of Court, those certain interests or estates and areas, described as "14.141 acre portion of land described as Tract 5", in, over, upon and across the Subject Property of defendants, and that said Subject Property of defendants is described as follows:

Being all of that tract of land more particularly described in that certain MEMORANDUM OF ACTION captioned "DEPARTMENT OF TRANSPORTATION, Plaintiff, v. CITY OF RALEIGH; and UNITED STATES OF AMERICA, through its Agency, U.S. Environmental Protection Agency), Defendants" recorded in the Office of the Register of Deeds for Wake County in Book 18010, Page 1520, reference to which MEMORANDUM OF ACTION is made for a more particular description of said property of the defendants.

2. The interests or estates that Plaintiff acquired in, over, upon and across the Subject Property of defendants are described as follows:

Fee simple title to right of way, and a temporary construction easement to continue until the completion of the project, at which time said temporary construction easement will terminate. The underlying fee owners retain the right to use the temporary construction easement area(s) in any manner and for any purpose, including, but not limited to, access and parking, which is not inconsistent with the reasonable use and enjoyment of the easements by the Department of Transportation, its successors and assigns.

NEW CONTROL-OF-ACCESS (C/A):

Access is controlled by the Department of Transportation as is indicated by control-of-access (C/A) lines on the court plat filed herein, and on the plan sheets for Project WBS

35516.5.TA2, ID# R-2828, Parcel 175, on file in the office of Department of Transportation in Raleigh, North Carolina, which are or will be recorded, as required by law, in the office of the Register of Deeds of Wake County, and there will be no access to, from, or across the areas within the control-of-access (C/A) lines to the main traffic lanes, ramps or approaches from the property abutting said highway right of way.

3. The areas acquired in, over, upon and across the Subject Property are accurately shown upon the map entitled "PROPERTY DESCRIBED IN CIVIL ACTION ENTITLED STATE OF NORTH CAROLINA VS. CITY OF RALEIGH, ET AL, WAKE COUNTY, 2020-CVS-8879" as Parcel 175 previously filed by the plaintiff in this action, and include survey lines and station numbers as are delineated on the Project Plans for Department of Transportation Project I.D. #R-2828 (WBS 35516.5.TA2) as Parcel 175, on file in the Right of Way Branch of the Department of Transportation, Transportation Building, in Raleigh, North Carolina, and also on a copy of said Project Plans which are or will be recorded, as required by law, in the office of the Register of Deeds of Wake County, to which plans reference is hereby made for greater certainty of the areas and interests herein acquired, and said areas and interests are described by metes and bounds as follows:

NEW RIGHT OF WAY IN FEE SIMPLE:

Beginning at Point "10" being S. 26°08'43" E. 54.70 ft. from -L-, Sta. 866+74.62; thence N. 04°34'31" W. 58.82 ft. to point "44"; thence N. 04°34'31" W. 56.28 ft. to point "11"; thence N. 16°37'27" E. 107.25 ft. to point "12"; thence N. 49°51'14" W. 75.29 ft. to point "19"; thence N. 63°51'02" E. 90.50 ft. to point "22"; thence N. 26°08'58" W. 115.00 ft. to point "23"; thence N. 63°51'02" E. 370.00 ft. to point "24"; thence S. 26°08'58" E. 115.00 ft. to point "25"; thence N. 63°51'02" E. 1019.66 ft. to point "26"; thence N. 59°33'08" E. 229.83 ft. to point "43"; thence S. 23°49'09" W. 94.53 ft. to point "18"; thence S. 23°51'52" W. 269.43 ft to point "17"; thence S. 23°50'51" W. 246.23 ft. to point "42"; thence S. 63°51'02" W. 1323.08 ft. to point "45"; thence N. 27°54'56" W. 120.35 ft. to point "10"; returning to the place of beginning. Having an area of 610,112 square feet (14.006 acres), more or less.

TEMPORARY CONSTRUCTION EASEMENT #1:

Beginning at Point "34" being S. 26°08'58" E. 175.00 ft. from -L-, Sta. 873+15.00; thence N. 63°51'02" E. 145.00 ft. to point "37"; thence S. 26°08'58" E. 10.00 ft. to point "36"; thence S. 63°51'02" W. 145.00 ft. to point "35"; thence N. 26°08'58" W. 10.00 ft. to point "34"; returning to the place of beginning. Having an area of 1,450 square feet (0.033 acres), more or less.

TEMPORARY CONSTRUCTION EASEMENT #2:

Beginning at Point "38" being S. 26°08'58" E. 175.00 ft. from -L-, Sta. 876+80.00; thence N. 63°51'02" E. 140.00 ft. to point "41"; thence S. 26°08'58" E. 10.00 ft. to point "40"; thence S. 63°51'02" W. 140.00 ft. to point "39"; thence N. 26°08'58" W. 10.00 ft. to point "38"; returning to the place of beginning. Having an area of 1,400 square feet (0.032 acres), more or less.

TEMPORARY CONSTRUCTION EASEMENT #3:

Beginning at Point "29" being N. 26°08'58" W. 200.00 ft. from -L-, Sta. 878+30.00; thence N. 26°08'58" W. 10.00 ft. to point "30"; thence N. 63°51'02" E. 140.00 ft. to point "31"; thence S. 26°08'58" E. 10.00 ft. to point "32"; thence S. 63°51'02" W. 140.00 ft. to point "29"; returning to the place of beginning. Having an area of 1,400 square feet (0.032 acres), more or less.

The underlying fee owners retain the right to use the temporary construction easement area(s) in any manner and for any purpose, including, but not limited to, access and parking, which is not inconsistent with the reasonable use and enjoyment of the easements by the Department of Transportation, its successors and assigns.

NEW CONTROL-OF-ACCESS (C/A):

Access is controlled by the Department of Transportation as is indicated by control-of-access (C/A) lines on the court plat filed herein, and on the plan sheets for Project WBS 35516.5.TA2, ID# R-2828, Parcel 175, on file in the office of Department of Transportation in Raleigh, North Carolina, which are or will be recorded, as required by law, in the office of the Register of Deeds of Wake County, and there will be no access to, from, or across the areas within the control-of-access (C/A) lines to the main traffic lanes, ramps or approaches from the property abutting said highway right of way.

4. Defendant City of Raleigh shall convey the following approximate 11.124 acre portion of the remainder of the subject property, described as "Remaining Area #2" on the court plat previously filed in this action, in fee simple, to the plaintiff by special warranty deed executed contemporaneously with the execution of this Consent Order, and Defendant, United States of America, through its Agency, U.S. Environmental Protection Agency, shall release its lien interest in the property described as "Remaining Area #2" and that said areas to be conveyed are described as follows:

REMAINING AREA #2:

Beginning at Point "45" being S. 27°21'45" E. 175.04 ft. from -L-, Sta. 866+74.62; thence N. 63°51'02" E. 1323.08 ft. to point "42"; thence S. 23°50'51" W. 176.73 ft. to a "CORNER"; thence S. 23°47'35" W. 940.78 ft. to a "CORNER"; thence N. 59°30'45" W. 144.59 ft. to a "CORNER"; thence N. 10°20'04" E. 160.54 ft. to a "CORNER"; thence N. 76°27'49" W. 90.64 ft. to a "CORNER"; thence S. 46°09'27" W. 177.24 ft. to a "CORNER"; thence N. 78°38'25" W. 97.00 ft. to a "CORNER"; thence N. 16°45'08" W. 102.86 ft. to a "CORNER"; thence N. 83°52'38" W. 178.83 ft. to a "CORNER"; thence N. 39°10'51" W. 138.95 ft. to a "CORNER"; thence N. 27°54'56" W. 73.84 ft. to point "45"; returning to the place of beginning. Having an area of 484,534 square feet (approximately 11.124 acres), more or less.

SUBJECT to the temporary construction easements described above which have been acquired by the plaintiff herein.

5. The Department of Transportation, plaintiff herein, shall pay into the office of the Clerk of this Court the Additional Sum of ONE HUNDRED NINETY-EIGHT THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$198,550.00), and that said sum, together with the Original Deposit in this action (\$1,162,850.00), shall be disbursed as follows:

(a) Defendant City of Raleigh shall receive twenty-two percent (22%) of the Original Deposit of ONE MILLION ONE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$ 1,162,850.00), which sum is TWO HUNDRED FIFTY-FIVE THOUSAND EIGHT HUNDRED TWENTY-SEVEN DOLLARS (\$255,827.00), and, in addition shall receive seventy-three percent (73%) of the Additional Sum of ONE HUNDRED NINETY-EIGHT THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$198,550.00), which sum is ONE HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED FORTY-TWO DOLLARS (\$144,942.00), resulting in a total distribution of FOUR HUNDRED THOUSAND SEVEN HUNDRED SIXTY-NINE DOLLARS (\$400,769.00), by check made payable to the City of Raleigh, c/o, City Attorney's Office, Post Office Box 590, Raleigh, North Carolina 27602. Defendant City of Raleigh shall take and receive the foregoing sums free and clear of any federal lien or other federal interest asserted by the Defendant United States in the Subject Property and Remaining Area #2, specifically any federal lien under 40 C.F.R. 30.535.

(b) Defendant, United States of America, shall receive seventy-eight percent (78%) of the Original Deposit of ONE MILLION ONE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$1,162,850.00), which sum is NINE HUNDRED SEVEN THOUSAND TWENTY-THREE DOLLARS (\$907,023.00), and, in addition shall receive twenty-seven percent (27%) of the Additional Sum of ONE HUNDRED NINETY-EIGHT THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$198,550.00), which sum is FIFTY-THREE THOUSAND SIX HUNDRED EIGHT DOLLARS (\$53,608.00), resulting in a total distribution of NINE HUNDRED SIXTY THOUSAND SIX HUNDRED THIRTY-ONE DOLLARS (\$960,631.00), by check made payable to the United States of America, c/o, Neal I. Fowler, Assistant United States Attorney, 150 Fayetteville Street, Suite 2100, Raleigh, North Carolina 27601-1461.

(c) Upon approval of this Consent Order and payment of the \$960,631.00 to the United States as set forth above, the United States partially releases its federal liens on the property taken and conveyed to Department of Transportation as described above (partial lien release limited to the 14.141 acres taken above and also the approximate 11.124 acres of "Remaining Area 2" conveyed), including specifically the partial release of federal liens described and recorded in the Wake County Register of Deeds in Book 18010, Page 1520; and Deed of Correction at Book 12224, Page 149. Any federal lien or other federal interests held by Defendant United States as to the 14.141 acres (Subject Property) and approximate 11.124 acres ("Remaining Area #2") are hereby satisfied and extinguished.

6. The total sum of ONE MILLION THREE HUNDRED SIXTY-ONE THOUSAND FOUR HUNDRED DOLLARS (\$1,361,400.00), said sum being the total amount of the Original Deposit plus said Additional Sum, and including any claim for interest and all costs, and the conveyance by the defendants of the Remaining Area #2, as more particularly described herein, is the full, fair and adequate value of and represents just compensation for the taking of the hereinabove described interests and areas by the Department of Transportation, and for the acquisition by the plaintiff of the hereinabove described Subject Property; for any and all damages caused by the acquisition for construction of North Carolina Department of Transportation Project WBS 35516.5.TA2, ID# R-2828, Wake County; for the past and future use thereof by the Department of Transportation, its successors and assigns for all purposes for which the said Department is authorized by law to subject the same.

This Judgment Filed and Entered on January 27, 2023, and Copies To:

John F. Oates, Jr.	(via CM/ECF electronic notification)
Andrew Joseph Seymour	(via CM/ECF electronic notification)
Dorothy V. Kibler	(via CM/ECF electronic notification)
Neal Fowler	(via CM/ECF electronic notification)

DATE:

January 27, 2023

PETER A. MOORE, JR., CLERK

(By) /s/ Nicole Sellers

Deputy Clerk